

**CITY OF SAN JOSE AND ABMEI
CITY PACKAGE PROPOSAL "D"**

PERIOD OF MEMORANDUM OF AGREEMENT

July 1, 2011 – June 30, 2013 (See attached)

WAGES

See attached proposal dated April 8, 2011

HEALTH AND DENTAL IN LIEU

See attached proposal dated April 8, 2011

HEALTHCARE DUAL COVERAGE

See attached proposal dated April 8, 2011

SIDE LETTER

Side Letter regarding:

- Retirement Benefits for current and new employees
- Layoff
- Supplemental Retiree Benefit Reserve (SRBR)
- Subsidy for Public Transit
- Sick Leave Payoff

DISABILITY LEAVE SUPPLEMENT

See attached proposal dated April 8, 2011

CONTRACTING OUT

See attached proposal dated April 8, 2011

CONTINUED PROFESSIONAL TRAINING

See attached proposal dated April 8, 2011

SALARY STEP STRUCTURE

See attached proposal dated April 8, 2011

OVERTIME CALCULATION

See attached proposal dated April 8, 2011

This proposal is submitted in an attempt to reach a settlement. In the event the proposal is not accepted, the City reserves the right to modify, amend and/or add proposals.

April 8, 2011

PERIOD OF MEMORANDUM OF AGREEMENT

Proposed Language:

This Agreement shall become effective July 1, 2011 except where otherwise provided, and shall remain in effect through June 30, 2013. No amendment or change to the provisions of this Agreement shall be valid or binding unless reduced to writing and signed by duly authorized representative(s) of the parties.

It is the mutual desire of the parties to conclude the meet and confer process as early as possible prior to the expiration of this Agreement. Therefore, it is agreed that the parties will exchange initial written proposals no later than the first day of August immediately prior to the expiration of this agreement.

The parties shall then set the first meeting of the meet and confer process at their mutual convenience as soon thereafter as possible. At this first meeting the parties may establish a final date for submission of additional proposals.

This language is intended to replace the language in:

- *Article 1 of the ABMEI Memorandum of Agreement*

CITY PROPOSAL – WAGES

Proposed Language:

Effective June 27, 2010, all salary ranges for employees holding positions in classifications assigned to ABMEI (Union Code 03/031) shall be decreased by approximately 4.65%.

Effective June 26, 2011, all salary ranges for employees holding positions in classifications assigned to ABMEI (Union Code 03/031) shall be decreased approximately by an additional 5.45%. This will result in the top and bottom of the range of all classifications represented by ABMEI (Union Code 03/031) being an additional 5.45% lower. All employees will receive an additional 5.45% base pay reduction.

This language is intended to replace the language in:

- *Article 5.1.1 of the ABMEI Memorandum of Agreement (replaces Section 5.1.1 as approved by the City Council on April 27, 2010, via the Pay proposal in the City's Last, Best, and Final Offer)*

CITY PROPOSAL – HEALTH AND DENTAL IN LIEU

Proposed Language:

A City employee who receives healthcare coverage as a dependent of another City employee or retiree shall be deemed not eligible for family coverage.

This language shall be added under:

- *Article 5.5.4 of the ABMEI Memorandum of Agreement (replaces Article 5.5.4 as approved by the City Council on April 27, 2010, via the Healthcare – Health in Lieu proposal in the City’s Last, Best, and Final Offer)*

CITY PROPOSAL – HEALTHCARE DUAL COVERAGE

Proposed Language:

An employee may not be simultaneously covered by City-provided medical benefits as a City employee and as a dependent of another City employee or retiree.

This language shall be added under:

- *Article 5.3.1 of the ABMEI Memorandum of Agreement (replaces Section 5.3.1)*

Proposed Language:

An employee may not be simultaneously covered by City-provided dental benefits as a City employee and as a dependent of another City employee or retiree.

This language shall be added under:

- *Article 5.4.1 of the ABMEI Memorandum of Agreement (replaces Section 5.4.1)*

Side Letter Agreement

BETWEEN

THE CITY OF SAN JOSE

and

ASSOCIATION OF BUILDING, MECHANICAL, AND ELECTRICAL INSPECTORS
(ABMEI)

RETIREMENT REFORM

The City and the Association of Building, Mechanical, and Electrical Inspectors (ABMEI) agree to continue meeting and conferring on pension and retiree healthcare benefits for current and future employees, including but not limited to healthcare benefits. The negotiations may include modification of healthcare (medical and dental) plans available to current employees, including but not limited to plan design.

Either the City or ABMEI may provide notice to the other of its request to continue to meet and confer. Upon such notice, the parties shall continue these negotiations within ten (10) calendar days after the City or ABMEI receives notice from the other. The City and ABMEI shall continue to meet and confer in good faith in an effort to reach a mutual agreement.

If the parties are at impasse and no agreement is reached, either party may invoke the impasse procedures in accordance with the applicable provisions under the Employer-Employee Relations Resolution No. 39367. The parties understand that this means that, notwithstanding any other provision in any successor Memorandum of Agreement, the City will have the right to unilaterally implement in the event that no agreement is reached at the conclusion of negotiations and mandatory impasse procedures. In such event, neither party waives any legal rights.

This Agreement is tentative and shall become effective only as part of the overall agreement on, and only during the term of, a successor agreement between the City and ABMEI.

FOR THE CITY:

FOR ABMEI:

Gina Donnelly Date
Office of Employee Relations

Steve Stender Date
Association of Building, Mechanical, and
Electrical Inspectors (ABMEI)

Side Letter Agreement

BETWEEN

THE CITY OF SAN JOSE

and

ASSOCIATION OF BUILDING, MECHANICAL, AND ELECTRICAL INSPECTORS
(ABMEI)

LAYOFF

The City or the Association of Building, Mechanical, and Electrical Inspectors (ABMEI) may provide notice to the other of its request to meet and confer on modifications to the City's layoff process and procedure, including the provisions of the Layoff article in the Memorandum of Agreement. Upon such notice, the parties shall meet within ten (10) calendar days after the City or ABMEI receives notice from the other. The City and ABMEI shall meet and confer in good faith in an effort to reach a mutual agreement. If the parties are at impasse and no agreement is reached, either party may invoke the impasse procedures in accordance with the applicable provisions under the Employer-Employee Relations Resolution No. 39367. The parties understand that this means that, notwithstanding any other provision in any successor Memorandum of Agreement, the City will have the right to unilaterally implement in the event that no agreement is reached at the conclusion of negotiations and mandatory impasse procedures.

This Agreement is tentative and shall become effective only as part of the overall agreement on, and only during the term of, a successor Memorandum of Agreement.

FOR THE CITY:

FOR ABMEI:

Gina Donnelly Date
Office of Employee Relations

Steve Stender Date
Association of Building, Mechanical, and
Electrical Inspectors (ABMEI)

Side Letter Agreement

BETWEEN

THE CITY OF SAN JOSE

and

ASSOCIATION OF BUILDING, MECHANICAL, AND ELECTRICAL INSPECTORS
(ABMEI)

SUPPLEMENTAL RETIREE BENEFIT RESERVE (SRBR)

The City and the Association of Building, Mechanical, and Electrical Inspectors (ABMEI) agree to discuss the Supplemental Retiree Benefit Reserve (SRBR) program in the Federated City Employees' Retirement System.

Either the City or ABMEI may provide notice to the other of its request to discuss the SRBR program. Upon such notice, the parties shall continue these discussions within ten (10) calendar days after the City or ABMEI receives notice from the other.

To the extent that any change to the SRBR program is a mandatory subject of bargaining, the City and ABMEI shall meet and confer in good faith in an effort to reach a mutual agreement. If the parties are at impasse and no agreement is reached on those issues that are a mandatory subject of bargaining, either party may invoke the impasse procedures in accordance with the applicable provisions under the Employer-Employee Relations Resolution No. 39367. The parties understand that this means that, notwithstanding any other provision in any successor Memorandum of Agreement, the City will have the right to unilaterally implement in the event that no agreement is reached at the conclusion of negotiations and mandatory impasse procedures.

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FOR THE CITY:

FOR ABMEI:

Gina Donnelly
Office of Employee Relations

Date

Steve Stender
Association of Building, Mechanical, and
Electrical Inspectors (ABMEI)

Date

Side Letter Agreement

BETWEEN

THE CITY OF SAN JOSE

and

ASSOCIATION OF BUILDING, MECHANICAL, AND ELECTRICAL INSPECTORS
(ABMEI)

SUBSIDY FOR PUBLIC TRANSIT

The City and the Association of Building, Mechanical, and Electrical Inspectors (ABMEI) agree to discuss the programs available to employees that provide subsidy for public transit. Discussions shall include, but not be limited to, modifications to the programs, voucher amounts and elimination of the programs.

Either the City or ABMEI may provide notice to the other of its request to discuss the programs available to employees that provide subsidies for public transit. Upon such notice, the parties shall continue these discussions within ten (10) calendar days after the City or ABMEI receives notice from the other.

To the extent that any change to the programs may be a mandatory subject of bargaining, the City and ABMEI shall meet and confer in good faith in an effort to reach a mutual agreement. If the parties are at impasse and no agreement is reached, either party may invoke the impasse procedures in accordance with the applicable provisions under the Employer-Employee Relations Resolution No. 39367. The parties understand that this means that, notwithstanding any other provision in any successor Memorandum of Agreement, the City will have the right to unilaterally implement in the event that no agreement is reached at the conclusion of negotiations and mandatory impasse procedures.

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FOR THE CITY:

FOR ABMEI:

Gina Donnelly
Office of Employee Relations

Date

Steve Stender
Association of Building, Mechanical, and
Electrical Inspectors (ABMEI)

Date

Side Letter Agreement

BETWEEN

THE CITY OF SAN JOSE

and

ASSOCIATION OF BUILDING, MECHANICAL AND ELECTRICAL INSPECTORS
(ABMEI)

SICK LEAVE PAYOFF

The City and the Association of Building, Mechanical and Electrical Inspectors (ABMEI) agree to continue meeting and conferring on sick leave payoff (Article 18.2 through Article 18.4, in addition to any other changes approved by City Council on April 27, 2010, via the Sick Leave Payout proposal in the City's Last, Best and Final Offer) for current and future employees.

Either the City or ABMEI may provide notice to the other of its request to meet and confer. Upon such notice, the parties shall continue these negotiations within ten (10) calendar days after the City or ABMEI receives notice from the other. The City and ABMEI shall meet and confer in good faith in an effort to reach a mutual agreement. If the parties are at impasse and no agreement is reached, either party may invoke the impasse procedures in accordance with the applicable provisions under the Employer-Employee Relations Resolution No. 39367. The parties understand that this means that, notwithstanding any other provision in any successor Memorandum of Agreement, the City will have the right to unilaterally implement in the event that no agreement is reached at the conclusion of negotiations and mandatory impasse procedures.

This Agreement is tentative and shall become effective only as part of the overall agreement on, and only during the term of, a successor agreement between the City and ABMEI.

FOR THE CITY:

FOR ABMEI:

Gina Donnelly
Office of Employee Relations

Date

Steve Stender
Association of Building, Mechanical and
Electrical Inspectors (ABMEI)

Date

CITY PROPOSAL – DISABILITY LEAVE SUPPLEMENT

Proposed Language:

Article 19 Disability Leave

- 19.1 Disability Leave Supplement Disability Leave Supplement (DLS) is the benefit provided pursuant to this Article, which, when added to Workers' Compensation Temporary Disability (WCTD) results in providing employees 85% of their regular base salary. Effective June 24, 2012, employees shall no longer be eligible to receive DLS.
- 19.2 Eligibility for Disability Leave Supplement A full-time employee who is required to be absent from work due to a job-related injury or industrial illness who receives WCTD payments pursuant to Division I or Division 4 of the California Labor Code is eligible for DLS, excluding ineligible causes listed in Section 19.4. In the event an employee is not eligible for WCTD payments because of the statutory waiting period, DLS shall not be paid for such a waiting period. The employee may use sick leave to cover the waiting period.
- 19.2.1 After the initial three day waiting period has been met, and the employee otherwise qualifies for DLS, the employee may utilize DLS for absences required for medical visits related to the injury after his/her return to work if he/she is unable to schedule such visits on non-work hours. DLS for such intermittent absences is subject to authorization by the Workers' Compensation Section. In no event may DLS exceed the limit specified in Section 19.6.
- 19.3 Eligibility for Disability Leave Supplement Linked to Temporary Disability If the Workers' Compensation Appeals Board of the State of California or any judicial court should determine that the employee is not entitled to Temporary Disability (WCTD) compensation, the employee shall not be entitled to Disability Leave Supplement (DLS) benefits. Under such circumstances, any DLS moneys paid to the employee by the City must be returned to the City within one year.
- 19.4 Ineligible Causes for Disability Leave An employee shall not be eligible for disability leave, and shall not receive DLS if the injury or illness that causes the absence results from:
- An act of gross negligence of such employee
 - Any work voluntarily undertaken by employee from which he/she has been prohibited from engaging in as determined by a City physician, prior to the date of injury.

- 19.5 Ineligibility if Offer and Decline of Modified Duty DLS shall not be provided if the City offers the employee employment at identical or similar salary, within the employee's medical limitations, and the employee refuses or fails to accept duty for which he/she is physically qualified.
- 19.6 Maximum Term of Disability Leave Supplement The employee will receive DLS benefits equal to the amount of money which, when added to the WCTD equals 85% of what the employee would have earned at the position from which he/she is disabled for one of the following time periods, whichever is shortest:
- The time the employee is medically required to be absent due to a work-related injury or illness, after the required three day waiting period.
 - The period of time WCTD is payable to the employee under the Workers' Compensation provisions of Division 1 or Division 4 of the Labor Code of the State of California.
 - Effective June 26, 2011, an employee will be eligible to receive DLS for a maximum of three (3) months (or 520 hours if not continually absent) for any current or future work-related injury or illness. Any employee who has exceeded three (3) months (or 520 hours if not continually absent) as of June 26, 2011, will no longer be eligible to receive DLS.
- 19.7 Time Limit for DLS Eligibility Effective June 26, 2011, after 520 hours of DLS, the employee is entitled to no additional compensation for the injury or illness. No employee shall be eligible for DLS five (5) years after the date of the onset of the injury or illness for which he/she is claiming DLS.
- 19.8 Disability Leave Supplement is in Lieu of Regular Compensation Employees who receive WCTD and DLS compensation do not receive their regular salary. DLS as described in this Article is in lieu of regular compensation.
- 19.9 Requirement of Evidence Proving Temporary Disability The Director of Finance is responsible for determining eligibility for DLS. In making this determination, the Director may require the employee to provide proof of injury or illness, proof that the injury or illness will last, and proof of other relevant matters as determined by the Director. The Director may require the employee to submit to a medical examination by a physician selected by the City.
- 19.10 Termination of Disability Leave An employee who is unable to return to full time regular duty following the expiration of any and all leave provided in this Article and the integration of accrued vacation and of Sick Leave as

provided in Article 18 and with Workers' Compensation may be separated from City service.

19.11 Integration After the maximum time limit specified in Article 19.6, the integration of an employee's available leave will occur in the following order: (1) accrued Vacation hours, (2) earned Compensatory Time once Vacation has been exhausted, and (3) accrued Sick Leave once Vacation and Compensatory Time have both been exhausted.

- In no event shall an employee receive an amount, including any Workers' Compensation Temporary Disability payments, in excess of the employee's regular base salary.

This language is intended to:

- *Replace Article 19 through Article 19.9.1, and eliminate Article 18.1.3.1 through Article 18.1.3.2, of the ABMEI Memorandum of Agreement, in addition to any other changes approved by City Council on April 27, 2010, via the Disability Leave Supplement proposal in the City's Last, Best and Final Offer.*

CITY PROPOSAL – FULL UNDERSTANDING, MODIFICATION AND WAIVER

Proposed Language:

The City agrees to meet and confer with the Union prior to contracting out work currently performed by bargaining unit members whenever such contracting out would result in material reduction of work done by bargaining unit members or would have significant adverse impact on bargaining unit work. It is agreed that position reductions, which result in lay-off of employees in the bargaining unit constitute significant impact on bargaining unit work.

This language shall be added as Article 9.5 of the ABMEI Memorandum of Agreement.

CITY PROPOSAL – CONTINUED PROFESSIONAL TRAINING

Proposed Language:

The Department of Planning, Building, and Code Enforcement shall endeavor to provide up to twenty-four (24) hours of training per fiscal year, as is relevant to each inspector employed in the Department of Planning, Building, and Code Enforcement. Such training shall be scheduled at the discretion of the Director of Planning, Building, and Code Enforcement and employees shall be compensated at the appropriate rate for attendance at the training.

ABMEI shall make recommendations regarding training needs and advise the Department Director and the training committee of specific training opportunities.

This language shall be added as

- *Article 31 of the ABMEI Memorandum of Agreement.*

CITY PROPOSAL – SALARY STEP STRUCTURE

Proposed Language:

Salary Steps

Effective June 26, 2011, the salary steps for all classifications represented by ABMEI will change from approximately 5% between each step to approximately 2.5%. This will result in an increase in the number of steps in the pay range.

This language shall be added as:

- *Article 5.1.8 of the ABMEI Memorandum of Agreement*

CITY PROPOSAL – OVERTIME CALCULATION

Proposed Language:

6.6 Hours assigned and worked in excess of forty (40) hours per week shall be compensated by overtime pay or compensatory time at 1.5 times the hourly rate for the number of overtime hours worked. Paid time off shall not be considered time worked for the purpose of calculating eligibility for overtime.

6.6.1 Notwithstanding 6.6 above, any employee who works in excess of twelve consecutive hours shall be compensated at the rate of two (2) times the employee's hourly rate for all hours worked in excess of twelve (12) consecutive hours.

This language is intended to replace the language in:

- *Articles 6.6 through 6.6.2 and 6.8 of the ABMEI Memorandum of Agreement*